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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/716,059 | 11/18/2003 | Lewis Timothy Lukich | DN2003186 | 4788 |
| 27280 | 7590 | 04/10/2006 | EXAMINER | |
| THE GOODYEAR TIRE & RUBBER COMPANY INTELLECTUAL PROPERTY DEPARTMENT 823 1144 EAST MARKET STREET AKRON, OH 44316-0001 | | | MAKI, STEVEN D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1733 | |

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|---|--------------------------------------|--------------------------------------|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/716,059 | Applicant(s) LUKICH ET AL. | |
| | Examiner Steven D. Maki | Art Unit 1733 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1 and 5-12.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see advisory action attachment.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 3. NOTE: The new issues are (1) amending claim 1 line 9 to recite --consists of-- and (2) amending claim 12 such that the description of claim 12 is a duplicate of the language of lines 26-28 of claim 1.

Advisory Action Attachment

Applicant's arguments regarding Japan 209 relate to the new issue and are not persuasive since the after final amendment filed 3-23-06, which raises the new issue, has not been entered.

With respect to Sandstrom, applicant argues that this reference does not disclose a tread composed of closed cellular rubber and that Cole is not related to a tire of applicant's required type. This argument is not persuasive. Motivated by the desire found in Sandstrom et al to provide a tread having lugs for a pneumatic agricultural tire (off-road tire) with a substantial shock absorbing property / high dampening property, one of ordinary skill in the art would have found it obvious to use Cole's teaching to improve the shock absorbency / dampening characteristics of an off-road tire with tread lugs by blowing Sandstrom et al's tread rubber composition with Cole's blowing agent so as to produce a micro porous closed cellular rubber having good shock absorbing characteristics / higher dampening characteristics. One of ordinary skill in the art would have had a reasonable expectation of success for providing the tread of Sandstrom et al's agricultural tire (off-road tire) with closed cells since (1) Cole's invention is to convert a hard rubber having low shock-dampening characteristics for an off-road tire to a closed cell rubber having good shock absorption / higher dampening characteristics and (2) Japan 209 evidences that closed cell rubber can be used in an off-road tire such as a pneumatic agricultural tire.

With respect to Egan, applicant argues that this reference is not directed to applicant's claimed invention requiring significantly raised and spaced lugs in

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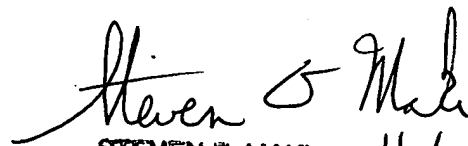
combination with applicant's defined cellular density and cell size to cooperatively provide a shock absorbing effect for a tire. More properly, Egan, directed to providing the tread of an off-road tire with closed cells so that the tire has a softer ride, teaches that rubber (such as butyl rubber as found in Sandstrom et al) should contain closed cells so that desired ride qualities are obtained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven D. Maki
April 6, 2006


STEVEN D. MAKI
PRIMARY EXAMINER 4-6-06